

AGENDA
ASSEMBLY BUDGET SUBCOMMITTEE NO. 4
ON GENERAL GOVERNMENT

Assemblymember John Dutra, Chair

WEDNESDAY, MARCH 24, 2004
STATE CAPITOL, ROOM 437
1:30 P.M.

ITEMS PROPOSED FOR CONSENT

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ITEMS TO BE HELD OVER

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8700	CALIFORNIA VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD

ITEM 0280 COMMISSION ON JUDICIAL PERFORMANCE

ISSUE 1: OVERVIEW

The California Constitution directs the Commission on Judicial Performance to consider complaints against judges. It also requires that the budget of the Commission be independent of any other state agency or court.

The Commission on Judicial Performance was established by voter referendum in the November 1960 election. The provisions establishing the commission – for the purpose of providing real protection against incompetency, misconduct or non-performance of duty on the Bench which were part of a package of judicial administration reforms. The commission's office was established and the commission began its work in 1961. California was the first state to set up a permanent body to address judicial misconduct. Today there are comparable bodies in all fifty states and in the District of Columbia, many of which were initially modeled after "the California plan."

The commission is responsible for the investigation of complaints of judicial misconduct and incapacity and for the discipline of judges, former judges and court commissioners and referees. The commission's authority is limited to investigation and discipline of judicial misconduct, which usually involves conduct in conflict with the Code of Judicial Ethics.

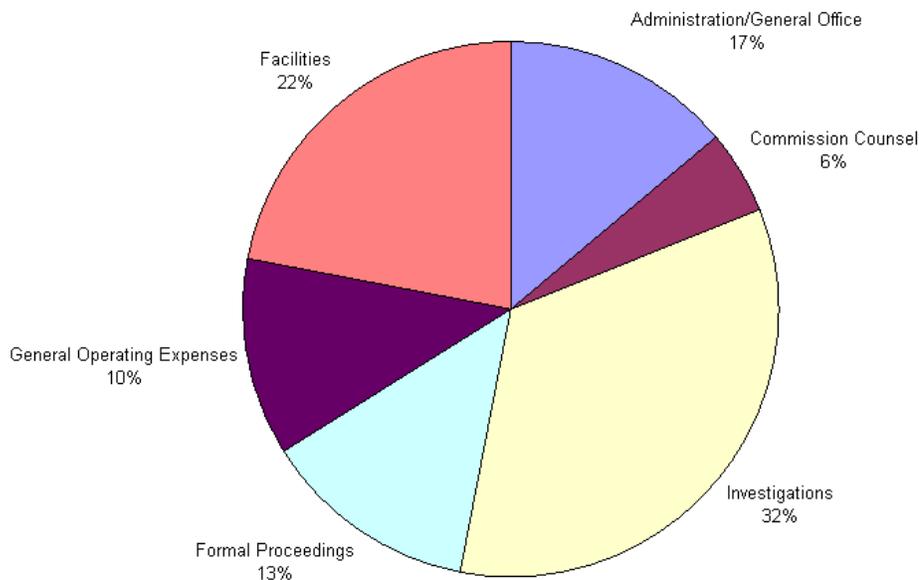
The California Constitution (Article VI, Section 8) specifies that the Commission be composed of eleven members: one justice of a court of appeal and two trial court judges, appointed by the Supreme Court; two attorneys appointed by the Governor; six lay citizens, two appointed by the Governor, two appointed by the Senate Committee on Rules and two appointed by the Speaker of the Assembly. Members are appointed to four-year terms. Members do not receive a salary but are reimbursed for commission related expenses.

The Constitution requires the Supreme Court to make rules "for the conduct of judges, both on and off the bench, and for judicial candidates in the conduct of their campaigns," to be referred to as the "Code of Judicial Ethics" (California Constitution, article VI, section 18(m)). The Supreme Court adopted the Code of Judicial Ethics effective January 1996, with amendments in 1996, 1997, 1999 and 2000. At the request of the Commission, Canon 3D(3) was amended by the Supreme Court, effective March 4, 1999. In addition to requiring judges to report to the Commission felony and misdemeanor charges involving moral turpitude, it requires the reporting of misdemeanors involving violence, the use or possession of controlled substances, the misuse of prescription drugs, or the personal use or furnishing of alcohol. On December 30, 2002, the Supreme Court adopted an interim amendment to Canon 6 concerning the practice of law by subordinate judicial officers and certain others performing judicial functions.

The Commission employs a staff of 27, including 16 attorneys and 11 support staff. All commission staff are state employees. The director-chief counsel heads the agency and reports directly to the commission, oversees the intake and investigation of complaints and the Commission examiners' handling of formal proceedings. The director-chief counsel is also the primary liaison between the commission and the judiciary, the public and the media. The commission's legal staff is responsible for the evaluation and investigation of complaints. Three attorneys are primarily responsible for reviewing and evaluating new complaints, and seven attorneys are primarily responsible for conducting staff inquiries and preliminary investigations.

Four trial counsels serve as examiner during formal proceedings. The examiner is responsible for preparing cases for hearing and presenting the evidence that supports the charges before the special masters. The examiner handles briefing regarding special masters' reports, and presents cases orally and in writing in hearings before the commission and the California Supreme Court. Commission counsel reports directly to the commission. Commission counsel is responsible for coordination of formal hearings and is solely responsible for assisting the commission in its deliberations during its adjudication of contested matters. Commission counsel does not participate in the investigation or prosecution of cases.

For the 2002-2003 fiscal year (FY), approximately 32% of the commission's budget supported the intake and investigation functions of the commission and approximately 19% of the commission's budget was used in connection with formal proceedings. The remaining 49% went toward sustaining the general operations of the commission, including facilities, administrative staff, supplies, and security.



The Governor's Budget proposes a budget of \$3.9 million and 27 positions. This is similar to the budget in the current year.

COMMENTS:

No issues have been raised regarding the budget for this department. It is proposed for approval on consent.

ITEM 0390 CONTRIBUTION TO JUDGES' RETIREMENT SYSTEM**ISSUE 5: OVERVIEW**

The Judges' Retirement System (JRS) provides benefits for judges of the Supreme Court, Appellate Courts, Superior Courts and Municipal Courts. Benefits under the JRS are based upon age, years of service and compensation of active justices. As JRS is a defined benefit system, the State contributes to this fund to cover actual needs beyond the employee's contribution of eight percent of salary.

Judges' Retirement System II (JRS II) was established in 1994. All new judges elected or appointed after November 8, 1994 are members of JRS II. This system is designed on an actuarial basis as compared to the "pay as you go" JRS. Retiring JRS II members have the option to receive a lump sum based upon contributions and investment earnings or monthly payments according to a defined benefit plan.

The Governor's Budget proposes expenditures of \$128.5 million for JRS and \$1.4 million for JRS II.

COMMENTS:

No issues have been raised regarding this item. It is proposed for approval on consent.

ITEM 0850 CALIFORNIA STATE LOTTERY

ISSUE 2: OVERVIEW

On November 6, 1984, California voters approved Proposition 37, the California State Lottery Act (California Government Code, Title 2, Division 1, Chapter 12.5). The Act provides that at least 34% of the Lottery revenues must go to public education. This supplemental funding provides schools with additional resources to meet their locally determined needs.

The act specifies that the lottery is to be operated and administered by a Commission appointed by the Governor. The Legislature has the authority to amend the Lottery Act if, by doing so, it furthers the purposes of the Act. These amendments require a bill to be passed by a vote of two-thirds of the membership of both house of the Legislature and signed by the Governor.

In 2001-02 the State Lottery had \$2.9 billion in sales. This provided \$1 billion in funding to public education. By September 2002, the total revenue made available to education from the inception of the Lottery had totaled \$14 billion. By June 30, 2003, that amount had increased to \$15 billion.

The Governor's Budget estimates total lottery sales of \$2.8 Billion in FY 2004-05 with slightly over \$1 billion going public education. This is similar to the projected revenues in FY 2003-04. The projected distribution of these revenues is 70 percent to the Department of Education, 14 percent to California Community Colleges, 4 percent to the California State University system and 2 percent to the University of California system. Fractional amounts will be distributed to educational programs at Hastings College of Law, California Youth Authority, Department of Developmental Services, Department of Mental Health and the state's special schools.

COMMENTS

No issues have been raised regarding the budget for this agency. It is proposed for approval on consent.

ITEM 0855 CALIFORNIA GAMBLING CONTROL COMMISSION

ISSUE 3: OVERVIEW

The California Gambling Control Commission (Commission), under the Gambling Control Act, and pursuant to the Governor's Executive Order D-29-01, has jurisdiction over operation, concentration, and supervision of gambling establishments, and over all persons or things having to do with the operations of gambling establishments in the State of California. The focus of the Commission is to act as the regulatory body over gambling activities in the State, setting policy, establishing regulations, issuing licenses, serving as the adjudicator for license denials recommended by the Division of Gambling Control, and any other related items and issues that may come before the Commission. In addition, the Commission, pursuant to the Governor's Executive Order D-31-01, under the Tribal-State Gaming Compacts, is ordered to (1) administer the gaming device license draw process, (2) control, collect, and account for all license fees, and (3) ensure that the allocation of gaming devices among California Indian Tribes does not exceed the allowable number provided in the Compacts. Included within this responsibility is serving as the Trustee for the Revenue Sharing Trust Fund, and Administrator of the Special Distribution Fund. There are 119 cardrooms and 53 tribal casinos currently operating in the State of California. The Division of Gambling Control (DGC) within the Department of Justice (DOJ), is the state law enforcement authority with especial jurisdiction over gambling activities within the State of California, and is the entity that conducts criminal background investigations for the Commission on gambling license and work permit applications received by the Commission

COMMENTS:

No issues were raised related to this agency's budget. It is proposed for approval on consent.

ITEM 8550 CALIFORNIA HORSE RACING BOARD

ISSUE 4: OVERVIEW

The purpose of the California Horse Racing Board is to regulate pari-mutuel wagering for the protection of the betting public, to promote horse racing and breeding industries, and to maximize State of California tax revenues.

In 1933, the people of the State of California adopted a constitutional amendment that created the California Horse Racing Board. The measure wrote many safeguards into the law and gave complete jurisdiction and supervision over all racing activities to the State of California acting through the board. Pursuant to these powers, the board passed rules establishing the authority of the stewards, but made the stewards strictly and completely responsible to the board for all their action.

The board, currently a seven-member commission appointed by the Governor, supervises all race meetings in the state where pari-mutuel wagering is conducted. Principal activities of the board include: protecting the betting public; licensing of racing associations; sanctioning of every person who participates in any phase of horse racing; designating racing days and charity days; acting as a quasi-judicial body in matters pertaining to horse racing meets; collecting the state's lawful share of revenue derived from horse racing meets; and enforcing laws, rules, and regulations pertaining to horse racing in California. The State's revenue from horse racing is principally derived from fees based upon a percentage of the pari-mutuel wagering pools, breakage (the odds cents not paid to winning ticket holders), and unclaimed tickets. Additional revenue is derived from licenses issued to horse owners, trainers, jockeys, grooms and others, and from fines.

The Governor's Budget proposes a \$8.4 million budget with 30 positions for the Horse Racing Board. This is a similar budget to that authorized in the current year.

COMMENTS:

No issues have been raised related to this budget. It is proposed for approval on consent.

ITEM 8660 PUBLIC UTILITIES COMMISSION

The Public Utilities Commission (PUC) regulates privately owned "public utilities," such as gas, electric, telephone, and railroad corporations, as well as certain passenger and household goods carriers. The commission's primary objective is to ensure adequate facilities and services for the public at equitable and reasonable rates. The commission also promotes energy conservation through its various regulatory decisions.

Today's hearing is limited to the commission's Teleconnect Program. The subcommittee's general hearing on the PUC budget proposal is scheduled for April 13th.

TELECONNECT PROGRAM

The Teleconnect Program is one of six programs established by the PUC to promote universal access to telephone and telecommunications services.

- High-Cost Fund A and High-Cost Fund B Programs subsidize service in rural and other high-cost environments. Fund A subsidizes service in areas served by smaller providers and Fund B subsidizes services in areas served by the major telecommunications providers, including SBC and Verizon.
- The Deaf and Disabled Telephone Program provides special equipment and services to provide access to telecommunications services for deaf and disabled persons.
- The Universal Lifeline Telephone Service (ULTS) Program provides subsidized service to low-income persons.
- The Teleconnect Fund subsidizes telecommunications rates for schools, libraries, public and nonprofit hospitals, and certain other nonprofit organizations.
- The Public Policy Payphone Program subsidizes the location of payphones in critical areas with limited access to regular service.

The PUC imposes surcharges on telecommunications services to finance these programs.

BACKGROUND:

The Teleconnect Program provides discounts on telephone service, and other advanced telecommunication services that provide access to the Internet (such as DSL services) to schools, libraries, and qualifying hospitals, health clinics, and community-based organizations. Currently, the program provides a 50 percent discount regardless of the particular qualifying service or recipient. The service carrier applies this discount to the qualifying entity's telecommunications bill. The service carrier then submits claims to PUC to be reimbursed for the discounts provided.

Recent Legislation. AB 855, Firebaugh (Chapter 820, Statutes of 2003), specifically established the program in statute, although the program has operated under PUC decisions since 1996. SB 1863, Bowen, (Chapter 308, Statutes of 2002) made nonprofit community

technology programs eligible for the same discount provided to schools and libraries (currently 50 percent). Previously, the PUC had provided a 25 percent discount for these nonprofit entities. SB 720, Bowen, (Chapter 531, Statutes of 2003) allows the PUC to spend up to \$3 million from its appropriation for the Teleconnect Program in 2003-04 and 2004-05 to pay for an additional 40 percent of the one-time installation costs for entities that do not have access to advanced telecommunications services. The additional \$3 million would be from any unencumbered balance remaining from these appropriations.

The Federal E-Rate Program. The federal government's E-Rate Program also offers discounts on telecommunications services to schools and libraries (but not to hospitals, clinics or nonprofit organizations). The federal program also provides discounts on wiring and hardware needed to expand data access within a school or library. The E-Rate program provides a 20 percent discount on eligible services to libraries and a discount of 20 percent to 90 percent on services to schools (Higher discounts are awarded to schools in rural locations and to schools with a higher percentage of students that qualify for the National School Lunch Program). Schools and libraries may participate in both the federal E-Rate and state Teleconnect programs, the federal discount is applied first to the cost of the services, and then the state discount is applied to the remaining costs. For example, a school with 50 percent of students qualifying for the National School Lunch Program would receive a 60-percent E-Rate discount. The PUC's Teleconnect Program would then provide a 50 percent discount on the remainder of the bill, so the net cost to the Teleconnect Fund would be 20 percent of the full bill (half of the 40 percent remainder after the E-Rate discount).

However, the E-Rate Program and the Teleconnect Program operate somewhat differently. For example, schools and libraries may receive a direct payment for their E-Rate discount, while the Teleconnect Program discount is deducted from the bill.

Governor's Budget Proposal

The 2004-05 Budget proposes \$5.3 million for the Teleconnect Program. This is a reduction of \$21.1 million, or 75 percent, from the budget's spending estimate of \$26.4 million in the current year. Moreover, the budget proposal falls far short of the PUC's estimated program needs. On December 18, 2003, the PUC adopted a revised spending estimate for the current year of \$37.654 million (including \$3 million for the new SB 720 grant program) and approved \$38.682 million of spending for 2004-05. Table 1 compares the Governor's Budget with the PUC's approved spending estimates.

Figure 1			
Public Utilities Commission			
Teleconnect Program Funding			
(in thousands)			
	2003-04	2004-05	Two-year Totals
PUC (Dec. 18 estimate)	\$37,654	\$38,682	\$76,336
Governor's Budget	<u>26,442</u>	<u>5,314</u>	<u>31,756</u>
Difference	\$11,212	\$33,368	\$44,580

The expenditures proposed in the Governor's Budget total \$44.6 million less than the program needs estimated by the PUC. The Governor's Budget spending levels are limited to the current remaining balance in the Teleconnect Fund plus estimated interest earnings. This limitation results from the administration's decisions not to approve either of the following actions that would provide additional resources for the program:

1. Repayment of a portion of the \$150 million loan made from the Teleconnect Fund to the General Fund in the 2003-04 Budget Act.
2. Restoration of a program surcharge on telecommunications bills to generate additional revenue. The Teleconnect surcharge was suspended in 2003 following the accumulation of a significant surplus in the fund. The surcharge remains suspended, even though the surplus was essentially eliminated by making the loan to the General Fund in the current year.

The Legislative Analyst's Office (LAO) notes that in the past, demand for the subsidies typically has failed to meet PUC's budget projections, but that claims have increased recently, with over \$45 million in claims made so far in the current year. While there is evidence that utilization of the program has increased, the majority of the current-year claims are the result of delays by the telecommunications carriers in submitting claims from prior years (mainly due to delays in the federal E-Rate program that caused carriers to postpone filing their claims until they knew how much E-Rate funding had been provided).

The increased utilization is partly due to the expansion of discounts and services to qualified community-based organizations mandated by SB 1863. Since this law change, there has been a 90 percent increase in the number of community-based organizations participating in the program. Given these factors, LAO finds that the funding requirements of the program will likely exceed the appropriation proposed in the Governor's Budget.

ISSUE 1: BUDGET PROPOSAL INCONSISTENT WITH LEGISLATIVE INTENT

AB 1756, a 2003-04 budget trailer bill, established the following specific conditions for repayment of the \$150 million loan made from the Teleconnect Fund to the General Fund (Public Utilities Code Section 280):

(e) Moneys loaned from the California Teleconnect Fund Administrative Committee Fund in the Budget Act of 2003 are subject to Section 16320 of the Government Code. If the commission determines a need for moneys in the California Teleconnect Fund Administrative Committee Fund, the commission shall notify the Director of Finance of the need, as specified in Section 16320 of the Government Code. The commission may not increase the rates authorized by the commission to fund the program specified in subdivision (b) while moneys loaned from the California Teleconnect Fund Administrative Committee Fund in the Budget Act of 2003 are outstanding unless both of the following conditions are satisfied:

(1) The Director of Finance, after making a determination pursuant to subdivision (b) of Section 16320 of the Government Code [that the fund has a need for the money], does not order repayment of all or a portion of any loan from the California Teleconnect Fund Administrative Committee Fund within 30 days of notification by the commission of the need for the moneys.

(2) The commission notifies the Director of Finance and the Chairperson of the Joint Legislative Budget Committee in writing that it intends to increase the rates authorized

by the commission to fund the program specified in subdivision (a). The notification required pursuant to this paragraph shall be made 30 days in advance of the intended rate increase.

Although PUC notified the **Director of Finance** that it would need a portion of the loan repaid in the budget year, this request was denied for the understandable reason that the General Fund does not have sufficient funds. However, **Director of Finance** also has refused the PUC's request to reimpose the Teleconnect surcharge on the basis that the director has not made the required finding that the Teleconnect Fund has a need for the additional money. While the precise amount of funding needed to continue operating the program in 2004-05 is being updated by the PUC, it seems clear that the program will require significantly more than the \$5.3 million remaining balance in the fund provided in the budget. The **Director of Finance's** rejection of the PUC's request, therefore, appears contrary to legislative intent.

LAO Finds Improvement. In the 2003-04 budget, the Legislature directed the PUC to report on the Teleconnect Program and some of the problems that had been identified. In reviewing the PUC's report the LAO finds that recent administrative changes to the Teleconnect Fund program have improved the program's service and accountability.

Streamlined Application Process. The LAO's May 2003 review of the program found that the application process was overly complex. Applicants had to apply for the discount with several different service providers depending on what services they were seeking and the geographic area of coverage. This was often a time-consuming and frustrating process. However, the commission has since streamlined its application process by allowing applicants to file directly with the commission. This has eliminated the long delays common under the prior system and streamlined the process for adding new discount-eligible services for participating entities.

Improved Fiscal Accountability. To improve the accuracy of budget projections, the commission has implemented a new carrier claim forecasting procedure that requires the carriers to submit annual claims forecasts that are based on the preceding year's claims, rather than rough estimates of program participation by CPUC staff. This change should improve the fiscal accountability of the program by providing a relatively more credible basis for budget projections.

ISSUE 2: MAXIMIZE FEDERAL FUNDING BY REQUIRING PARTICIPATION IN THE E-RATE PROGRAM

As mentioned above, schools and libraries may participate in both the E-Rate program and the Teleconnect Program and receive cumulative discounts from the two programs. Despite this, current PUC policy does not require participation in the E-Rate program as a condition of eligibility for the CTF program. Furthermore, lack of participation in the E-Rate program reduces federal funds available to schools and libraries in the state.

The LAO recommends enactment of legislation that requires eligible schools and libraries to participate in the federal E-Rate program as a condition of eligibility for the Teleconnect Program. This change will encourage schools and libraries to maximize available federal funds. In addition, because the Teleconnect discount is applied to the cost of the telecommunications service after the E-Rate discount has been applied, greater participation in the E-Rate Program will lower the funding needs of the Teleconnect Program.

ISSUE 3: TARGET DISCOUNTS BASED ON NEED

LAO points out that recent legislation has expressed legislative intent that a priority for the state's telecommunications policy is to assist in bridging the "digital divide." The current Teleconnect Program does not target most of its discounts to reach those individuals affected by the digital divide. Not all people have access to or the capability to use advanced telecommunications (for example, modern information technology such as the Internet). This circumstance is referred to as the "digital divide." The digital divide exists between those in cities and those in inner cities and rural areas, as well as between the educated and less well educated, and between economic classes.

Current Discounts Do Not Target Those Most in Need. Currently, the commission provides the same discount to all qualifying entities (50 percent). This contrasts with the federal E-Rate program that determines the level of subsidy for schools based on the number of students at the school eligible for the National School Lunch Program. It uses the lunch program as a benchmark to indicate the poverty level at the school, thereby targeting schools with a higher level of students from low-income households, who generally would have more limited access to the internet.

LAO Recommendation. The LAO recommends the enactment of legislation directing PUC to target discounts based on a criteria that will target the populations that currently have limited access to advanced telecommunications services. These criteria should target the discounts to those in inner cities and rural areas, as well as persons in low-income communities, since these populations have been found to have the lowest level of access to advanced telecommunications services. In addition, LAO recommends that the Legislature should consider how this program is coordinated with other state and local investments made in advanced telecommunications technologies for K-12 education.

ISSUE 4: CAP PROGRAM FUNDING TO ENSURE LEGISLATIVE OVERSIGHT

Under current law, the PUC has broad discretion to set the parameters of the Teleconnect Program. There are no limits on the number of participants or level of subsidies awarded in the CTF program. Instead, CPUC is given broad authority to administer the CTF program, including the authority to raise the surcharge that supports this program (with approval by Director of Finance) to cover increased program costs.

Potential for Significant Program Growth. While in past years the CTF program has had difficulty in spending its budgeted appropriation, LAO believes that recent administrative and legislative changes could result in significant program growth. The PUC's recent improvements to the application process are likely to contribute to program growth as participants are only required to sign up once and can easily add new services that qualify for the discount. In addition, Chapter 308 increased the discount available to community-based organizations, resulting in a significant increase in participation by these organizations. There are a large number of other community-based organizations that could potentially qualify for this discount, which also could result in further growth in the CTF program.

Chapter 677, Statutes of 1999 (SB 669, Polanco), increased legislative oversight by bringing the Teleconnect Program "on budget" and requiring that the expenditures be annually appropriated in the budget act. However, given the program's potential for significant future growth, LAO believes that a funding cap is appropriate. A similar practice has been employed with programs

funded by the public goods surcharge (an assessment on energy bills), including the PUC's energy efficiency program and the California Energy Commission's Renewable Energy and Public Interest Energy Research Development and Demonstration programs. In these programs, the Legislature enacted caps on revenues generated for these activities. In addition, legislation was also enacted that provided guidelines for how these funds should be spent. LAO believes that a similar approach would be effective for the CTF program.

COMMENTS:

1. **DOF** has indicated that its rejection of the PUC's request to reinstate the Teleconnect surcharge is based on a lack of confidence in the PUC's program spending projection and on a judgement by the administration that the program may not be warranted because the value of the discounts that it provides (especially for those entities that also qualify for the E-Rate Program) may be marginal. However, the budget does not propose any trailer legislation to eliminate or modify the program. The **DOF** should explain the administration's current policy position to the subcommittee. In particular, the **DOF** should explain to the subcommittee how the budget proposal complies with existing law.
2. The PUC should provide the subcommittee with an update of its estimates of Teleconnect Program funding needs.
3. The subcommittee may wish to hear testimony from representatives of participants in the Teleconnect Program regarding how the program operates, its benefits, and the effect of the budget proposal.
4. The LAO should discuss their recommendations, and the **DOF** and PUC should provide the subcommittee with their responses and comments.